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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,075	01/18/2006	Takeshi Koda	8048-1139	3697
<small>465</small> YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			<small>7590</small> EXAMINER PENDLETON, DIONNE	
			<small>10/02/2008</small> ART UNIT 2627	PAPER NUMBER
			MAIL DATE 10/02/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/565,075

**Applicant(s)**

KODA ET AL.

**Examiner**

DIONNE H. PENDLETON

**Art Unit**

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 March 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 17-28 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 18 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment to the claims filed on 8/13/2007 is not entered as being non-compliant in that claims 1-16 were cancelled by the amendment filed 3/6/07.

### ***Priority***

2. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claims 17-28** are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over the claims of copending

**Application Nos. 11/710,465, 11/710,547, 11/710,963, 11/710,968 and 10/565,076**

Although the conflicting claims are not identical, they are not patentably distinct from

each other because of obvious wording variations. For example, Application

11/710,465 recites, "a write-once recording medium including a plurality of recording layers", while the immediate application recites, "a write-once-type recording medium".

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claim 28** recites the limitation "said spare area" in line 23. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 17-28** are rejected under 35 U.S.C. 102(e) as being anticipated by **Park (US Patent 7,233,550)**.

**Regarding claim 17,**

Park teaches a write-once-type recording medium (**column 2:17-18**) comprising:

a data area (**see “data area” in figure 3**) to record therein record data;

a control information recording area (**see “lead-in” or “lead-out” areas in figure 3**), which includes a definite defect management area to record therein defect management information (**“DMA” in figure 3**) of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area (**“ISAO” OR “OSAO” in figure 3**), which is disposed between said control information recording area and said data area, to record therein evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information (**“TDMA2” in figure 3**) of said data area.

**Regarding claim 18,**

Park teaches that the evacuation data and the defect management information is continuously recorded in the shared area (**column 5:39-50 discloses a linear replacement scheme**).

**Regarding claim 19,**

Park teaches that the evacuation data and defect management information are recorded, repeatedly, a plurality of times, in said shared area (**column 5:39-50 teaches a linear replacement scheme i.e., repeated recordation of data**).

**Regarding claims 20 and 23,**

Park teaches a recording apparatus and recording method of recording onto a write-once-type recording medium (**column 2:17-18**) comprising:

a data area (**see “data area” in figure 3**) to record therein the record data;

a control information recording area (**see “lead-in” or “lead-out” areas in figure 3**), which includes a definite defect management area to record therein defect management information (**“DMA” in figure 3**) of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area (**“ISAO” OR “OSAO” in figure 3**), which is disposed between said control information recording area and said data area, to record therein

evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information ("**TDMA2**" in **figure 3**) of said data area, the recording apparatus comprising:

a first recording device ("**20**" in **figure 2**) for recording the record data into said data area; and

a second recording device (which uses "**27**" in **figure 2**) for recording the evacuation data and the defect management information into said shared area (**column 4:49-52**).

**Regarding claim 21.**

Park teaches that the evacuation data and the defect management information is continuously recorded in the shared area (**column 5:39-50 discloses a linear replacement scheme**).

**Regarding claim 22.**

Park teaches that the second recording device uses a border point as a start point, to record the evacuation data and the defect management information into the data-unrecorded area (**column 6:4-25; also see column 5:39-50 which discloses linear recordation; column 5:39-41 discloses that the shared area (ISOA, OSAO) may be partly used for replacement data (evacuation data), thus corresponding to "a start point"; while column 5:46-47 discloses that the "OSAO" includes a "TDMA" area (defect management information) corresponding to "border point"**).

**Regarding claims 24 and 26,**

Park teaches a reproducing apparatus and reproducing method of recording onto a write-once-type recording medium (**column 2:17-18**) comprising:

a data area (**see “data area” in figure 3**) to record therein the record data;

a control information recording area (**see “lead-in” or “lead-out” areas in figure 3**), which includes a definite defect management area to record therein defect management information (**“DMA” in figure 3**) of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area (**“ISAO” OR “OSAO” in figure 3**), which is disposed between said control information recording area and said data area, to record therein evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information (**“TDMA2” in figure 3**) of said data area, the reproducing apparatus comprising:

a first reading device/reproducing process (**“20” in figure 2**) for reading the defect management information in said shared area; and

a reproducing device (**which uses “27” in figure 2**) for reproducing the record data recorded in said data area or the evacuation data recorded in said spare area on the basis of the defect management information (**column 6:4-25 and see column 5:39-41**).

**Regarding claim 25.**

Park teaches that the reading device searches for a border point as a start point, to read the defect management information (**column 6:4-25; also see column 5:39-50 which discloses linear recordation; column 5:39-41 discloses that the shared area (ISOA, OSAO) may be partly used for replacement data (evacuation data), thus corresponding to "a start point"; while column 5:46-47 discloses that the "OSAO" includes a "TDMA" area (defect management information) corresponding to "border point").**

**Regarding claims 27 and 28.**

Park teaches a computer program product for recording/reproduction control in a computer-readable medium for tangibly embodying a program of instructions executable by a computer provided for a reproducing apparatus, said program making the computer function as at least a first portion of a recording/reading device and a second recording/reading device,

a data area (**see "data area" in figure 3**) to record therein the record data;

a control information recording area (**see "lead-in" or "lead-out" areas in figure 3**), which includes a definite defect management area to record therein defect management information (**"DMA" in figure 3**) of said data area, to record therein information for controlling at least one of operations of recording and reading in said data area;

and a shared area (**“ISAO” OR “OSAO” in figure 3**) , which is disposed between said control information recording area and said data area, to record therein evacuation data which is record data to be recorded at a position of a defect in said data area and to temporarily record therein the defect management information (**“TDMA2” in figure 3**) of said data area, the apparatus comprising:

a first reading/recording device (**“20” in figure 2**) for reading/recording the defect management information in said shared area; and

a reproducing/recording device (**which uses “27” in figure 2**) for reading/recording the evacuation/record data recorded in said data/shared area or the evacuation data recorded in said spare area on the basis of the defect management information.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIONNE H. PENDLETON whose telephone number is (571)272-7497. The examiner can normally be reached on 10:30-7:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dionne H Pendleton/  
Examiner, Art Unit 2627

/Wayne Young/  
Supervisory Patent Examiner, Art Unit 2627